

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RINKY DINK, INC. d/b/a PET STOP,

Plaintiff,

v.

WORLD BUSINESS LENDERS, LLC,

Defendant.

CASE NO. C14-0268-JCC

ORDER ON JOINT LCR 37
DISCOVERY MOTION

This matter comes before the Court on motion of Defendant World Business Lenders, LLC (“WBL”) for a protective order (Dkt. No. 27). Having considered the parties’ joint briefing and the relevant record, the Court hereby DENIES the motion for the reasons explained herein.

I. BACKGROUND

Plaintiff Rinky Dink, Inc. brings this proposed class action suit against Defendant WBL for alleged telemarketing. In its complaint, Plaintiff states that on October 16, 2013, it received a pre-recorded telemarketing call made by or on behalf of Defendant. Dkt. No. 1, Exhibit 1, p. 3. Plaintiff alleges that, by using an Automatic Dialing and Announcing Device (“ADAD”), Defendant violated the Washington Automatic Dialing and Announcing Device Statute (“WADAD”), RCW 80.36.400, and—by design—the Washington Consumer Protection Act (“WCPA”), RCW 19.86 *et seq.* Plaintiff brings suit on its own behalf and as a class representative for similarly situated businesses. *Id.* at 1. The class has not been certified, and the

1 parties are conducting discovery for certification motions. *See* Dkt. No. 30.

2 In the current discovery dispute, Defendant both (1) objects to several production
3 requests and (2) seeks a protective order barring Plaintiff from using identifying information to
4 “solicit new clients or class plaintiffs.” Dkt. No. 27, pp. 1, 10. Defendant proposes “a reasonable
5 compromise” by disclosing the requested information subject to a protective order. *Id.* at 10.

6 **A. Identifying Information on which a Protective Order is Sought**

7 Defendant either objects to producing, or seeks a protective order limiting Plaintiff’s use
8 of, the following:

- 9 a) Plaintiff’s Request for Production No. 3: Requesting any documentation identifying
10 the names, addresses, telephone numbers, and email addresses of persons to whom
11 calls were made from December 20, 2009 to present. Defendant objects on the basis
12 that the request is overly broad and “contact information for potential class members
13 is improper pre-certification.”
- 14 b) Plaintiff’s Request for Production No. 5: Requesting all documentation demonstrating
15 consent by Plaintiff or any class member to receive calls from Defendant or its third
16 party agents. Defendant objects on the basis that “contact information for potential
17 class members is improper pre-certification.”
- 18 c) Plaintiff’s Request for Production No. 6: Requesting all documentation demonstrating
19 an established business relationship between Defendant—or its third party agents—
20 and Plaintiff or any class member. Defendant objects on the basis that the request is
21 vague and ambiguous.
- 22 d) Plaintiff’s Request for Production No. 12: Requesting copies of all communication
23 between Defendant and its third party agents regarding the automated calls made to
24 Plaintiff and any class members. Defendant objects on the basis that “contact
25 information for potential class members is improper pre-certification.”
- 26 e) Plaintiff’s Request for Production No. 13: Requesting all documentation in which a

third party provided Defendant with information regarding the calls in issue, e.g. the date that calls were made, the numbers and area codes called, and the names and addresses of persons called. Defendant objects on the basis that “contact information for potential class members is improper pre-certification.”

f) Plaintiff’s Request for Production No. 15: Requesting documentation, databases, and contact information for persons who requested that Defendant or its third party agents cease making automated calls to them. Defendant objects on the basis that “contact information for potential class members is improper pre-certification.”

g) Plaintiff’s Request for Production No. 21: Requesting documentation referring or relating to the number of subscribers who receive the calls. Defendant objects on the basis that the request is overly broad and “contact information for potential class members is improper pre-certification.”

h) Interrogatory No. 3:

d. Requesting information about the “person(s) and/or entities called.”

Defendant objects on the basis that “contact information for potential class members is improper pre-certification.”

i) Interrogatory No. 13: Requesting all persons known to have asked Defendant and its third party agents to cease contacting them. This includes grievances made via email, mail, telephone, or submitted to government or consumer protection agencies such as the Better Business Bureau. Defendant objects on the basis that “contact information for potential class members is improper pre-certification.”

Dkt. 27, pp. 4–10.

Plaintiff responds that the requested information is not only validly discoverable, but that Defendant has not met the burden for imposing a protective order. *Id.* at 12–20. Of particular importance, Plaintiff argues, is the need to investigate affirmative defenses raised by Defendant. *Id.* at 15. The Court agrees.

1 **II. DISCUSSION**

2 **A. Disclosure of Identifying Information**

3 While both parties devote significant argument to whether the identifying information is
4 appropriately discoverable, the issue is not in dispute. Defendant has already produced the
5 requested information. Defendant's contention that this information is otherwise inappropriate
6 for discovery is, however, misguided. The Federal Rules of Civil Procedure favor broad pre-trial
7 discovery. *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993). Information "reasonably
8 calculated to lead to the discovery of admissible evidence" is discoverable. *Surfvivor Media, Inc.*
9 *v. Survivors Prods.*, 406 F.3d 625, 635 (9th Cir. 2005) (internal citation omitted). District courts
10 are afforded broad discretion in determining what is relevant and discoverable. *Id.*

11 The identifying information of actual and potential class members is discoverable pre-
12 certification where relevant to the prosecution of the class action and the claims at issue. *See, e.g.*
13 *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101–2 (1981); *Gilman v. ER Solutions, Inc.*, No. C11-
14 0806-JCC (Dkt. No. 67), at *4 (W.D. Wash. Feb. 3, 2012); *Agne v. Papa John's Int'l*, No. C10-
15 1139-JCC (Dkt. No. 183), at *6–7 (W.D. Wash. Dec. 20, 2011); *Martin v. Bureau of Collection*
16 *Recovery*, No. C10-7725, 2011 WL 2311869 at *4 (N.D. Ill. June 13, 2011). Where, as here,
17 Plaintiff must investigate common claims and affirmative defenses, the Court finds information
18 that identifies actual and potential class members relevant and discoverable.

19 **B. Defendant's Proposed Protective Order**

20 For good cause, the Court may issue a protective order to prevent "annoyance,
21 embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c). The party
22 moving for a protective order bears "a heavy burden" of showing that "specific prejudice or
23 harm will result if no protective order is granted." *Foltz v. State Farm Mut. Auto Ins. Co.*, 331
24 F.3d 1122, 1130 (9th Cir. 2003) (internal citation omitted). "[T]he mere possibility of abuses
25 does not justify [the] adoption of a communications ban that interferes with the formation of a
26 class or the prosecution of a class action . . ." *Gulf Oil*, 452 U.S. at 104. Key to the Court's

1 inquiry is whether the moving party has demonstrated a “clear record” and “specific findings”
2 establishing the need for a protective order. *Id.*

3 Defendant argues that the danger of “soliciting new clients or class members” justifies
4 the imposition of a protective order. Dkt. No. 27, p. 21–2. Defendant claims this request is
5 narrow: “both specific as to scope and . . . a reasonable limitation on the solicitation of
6 plaintiffs.” *Id.* at 22. However, Defendant refuses to specify what actions it would consider
7 “solicitation,” instead repeating its general request that solicitation of new clients be prohibited.
8 *Id.* at pp. 2, 3, 10, 20, 22, 24. The blanket prohibition on communication Defendant seeks is
9 functionally the same as that overturned by *Gulf Oil*, 452 U.S. at 101, 104. The only request the
10 Court finds in the pleadings is that Plaintiff be barred from the written solicitation otherwise
11 authorized under Washington Rule of Professional Responsibility (“RPC”) 7.3. Dkt. No. 27, p. 2,
12 n.1. This protection is not justified by a clear record or specific finds.

13 Defendant’s request conflates improper solicitation of legal clients for other, new cases
14 with the need to communicate with potential class members in the present case.

15 *i. The Solicitation of New Legal Clients is Governed by the Rules of Professional
16 Responsibility*

17 The Court agrees that Plaintiff’s attorneys may not use identifying information to solicit
18 new legal clients outside this present case. Such solicitation would not only be irrelevant to this
19 discovery, but also a potential violation of the Washington RPCs. *See* Wash. R. Prof. Con. 7.3.
20 Defendant has not established a clear record or specific findings to indicate such activity is
21 likely. Rather, Plaintiff’s counsel indicates that it trains its staff with particular care to follow
22 applicable RPCs. Dkt. No. 29, p. 1.

23 *i. The Solicitation of New Class Members is a Necessary Element of Class Action
24 Prosecution*

25 Defendant essentially argues that communicating with potential class members
26 constitutes the solicitation of new legal clients. In so doing, Defendant cites an order in which
this Court cautioned parties that identifying information was “not [to be] used for any other
purpose besides development of this case.” *Agne v. Papa John’s Int’l, Inc.*, C10-cv-01139-JCC,

at *6 (W.D. Wash. Dec. 20, 2011). Defendant misrepresents the Court's holding when it argues: "[by] barring plaintiffs from using the information other than for 'case development' purposes," the Court "implicitly" prohibited communication with potential class members. Dkt. No. 27, p. 24. However, in a class action lawsuit, "case development" necessarily includes efforts by the plaintiff "to inform potential class members of the existence of [the] lawsuit," and "to obtain information about the merits of the case from the persons they [seek] to represent." *Gulf Oil*, 452 U.S. at 101. By Defendant's logic, nearly all class action litigation violates the RPCs.

C. Disclosures and Instructions

It is ORDERED that any remaining discovery listed in Part I(A), *supra* is to be produced, with two exceptions: Plaintiff's Request for Production No. 13 and Interrogatory No. 3(d). Specifically:

- a) Plaintiff's Request for Production No. 3: Defendant is ordered to provide the requested documentation from December 20, 2009 to present. Defendant is not required to produce documentation on behalf of third parties Live Transfer or Raut Media.
- b) Plaintiff's Request for Production No. 5: Defendant is ordered to provide all documentation demonstrating prior express consent by persons called from December 20, 2009 to present.
- c) Plaintiff's Request for Production No. 6: Defendant is ordered to provide all documentation regarding which class members, if any, used or inquired about Defendant's services (establishing a relationship) from December 20, 2009 to present.
- d) Plaintiff's Request for Production No. 12: Defendant is ordered to provide all documentation of communication between Defendant and the third parties listed in Interrogatory No. 9 relating to the automated calls received by Plaintiff and any class members.
- e) Plaintiff's Request for Production No. 13: The Court finds this request duplicative of

Request for Production No. 12 and therefore finds production unnecessary. Fed. R. Civ. P. 26(b)(2)(C)(i).

f) Plaintiff's Request for Production No. 15: Defendant is ordered to provide all documentation regarding persons who requested that Defendant or its third party agents cease making automated calls to them.

g) Plaintiff's Request for Production No. 21: Defendant is ordered to provide all documentation establishing the total number of subscribers who received automated calls from Defendant or its third party agents from December 20, 2009 to present.

h) Interrogatory No. 3:

d. The Court finds this request duplicative of Request for Production No. 3 and therefore finds production unnecessary. Fed. R. Civ. P. 26(b)(2)(C)(i).

i) Interrogatory No. 13: Defendant is ordered to provide all documentation of grievances filed by persons known to have asked Defendant and its third party agents to cease contacting them. To the extent that Defendant possesses records of grievances filed to government agencies or consumer protection agencies, Defendant is ordered to provide such documentation.

While Plaintiff may use this information to investigate claims and develop its case pre-certification, this information is to be kept strictly confidential and redacted if used in any court submissions. *See Agne v. Papa John's Int'l, Inc.*, C10-cv-01139-JCC, at *6 (W.D. Wash. Dec. 20, 2011). The parties are reminded that they are bound by all Washington RPCs. The parties are further reminded of the stipulated protective order already approved by the Court. Dkts. No. 17, 18. In that protective order the parties agreed to use confidential materials "only for prosecuting, defending, or attempting to settle this litigation." Dkt. No. 17, p. 3.

III. CONCLUSION

For the foregoing reasons, Defendant's motion for a protective order and any remaining objections to discovery disclosures (Dkt. No. 27) are DENIED. Defendant is ORDERED to

1 produce any remaining discovery.

2 DATED this 23rd day of October 2014.

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9 John C. Coughenour
UNITED STATES DISTRICT JUDGE